

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 265

September 17, 1964

REORGANIZATION: MERGER ASSESSMENTS – SECOND ASSESSMENTS SAME YEAR – ESTOPPEL - BASIS

Syllabus:

In conformity with a plan of reorganization X acquired the assets and assumed the liabilities of Y in 1957, for X stock. Immediately thereafter the shareholders of Y exchanged their shares for the X stock obtained by Y. A few weeks later Y withdrew from California.

Y believing that its acquisition by X was not a reorganization, paid its tax only up to the date of withdrawal rather than for the entire taxable year. However, it appeared to the Board that a reorganization occurred within the meaning of Section 23251. Therefore, in 1958, an assessment was made for the unpaid tax since Section 23332 prohibits an abatement of tax because of the cessation of business resulting from a reorganization, consolidation, or merger.

Since the taxpayers filed a protest to the assessment and employees of this Board, knowing that the taxpayer had also merged the Z in the same manner as Y, informed the taxpayer in 1958, that the Franchise Tax Board's decision on its protest would be determinative of our position in regard to the Z merger.

Following a hearing on the protest to the Franchise Tax Board the assessment was withdrawn, based upon the decision in Andersen-Carlson Manufacturing Co. v. Franchise Tax Board (1955), 132 CA 2d 825.

Since the Y merger is substantially the same as that which was recently held to be a reorganization, O division asked several questions which are raised by the facts of this case.

- (1) Did the merger of Y with X constitute a reorganization within the meaning of Section 23251?
- (2) Does the law allow a second proposed additional assessment to be issued, based on the same facts for the same year, after a prior such assessment has been withdrawn?
- (3) Is the State now estopped to issue a proposed additional assessment in connection with the Z merger because the taxpayer was informed that the action of the Franchise Tax Board in the Y case would be controlling?

(1) While the decision of the Appellate Court in the Andersen-Carlson case was adverse to this Board the decision can be supported to some extent by the particular facts of the case. However, it is the position of the legal staff that the holding in that case be limited to its own facts. In Legal Memorandum #239 the Andersen-Carlson decision was thoroughly discussed and its facts were distinguished from the merger which was the subject of that opinion. The conclusion we reached in the legal memorandum was that a reorganization by merger occurred. Since the facts in this case are substantially the same as those considered in Legal Memorandum #239, it must be held that the merger of Y with X constituted a reorganization within the meaning of Section 23251.

(2) Section 25662 provides in part that the Franchise Tax Board shall mail notice or notices to the taxpayer of the additional tax proposed to be assessed and that each notice shall set forth the reasons therefor. The application of this section was considered in the Appeal of Kung Wo Company, Inc., State Board of Equalization, May 5, 1953. In that case the Franchise Tax Board disallowed the entire deduction for depreciation claimed by the taxpayer. A protest was filed and a hearing held following which the assessments were withdrawn or revised to allow the depreciation claimed. Several years later, however, additional assessments were issued reducing the depreciation allowance in order to coincide with a federal adjustment.

The taxpayer contended that the withdrawal of the earlier assessments precluded this Board from issuing assessments at a later date involving the same income years. However, in view of the language in Section 25662 and, in particular, the use of the words "notice or notices" and "each notice" the Board of Equalization held that the statute expressly authorized the issuance of a second assessment against the taxpayer for the same year. It is clear, therefore, that more than one assessment can be issued in any year and may be based upon the same facts as the prior assessment for the year provided, of course, that the later assessments are not barred by the statute of limitations.

(3) In order to invoke the equitable doctrine of estoppel it must be established that the taxpayer relied, to his detriment, upon statements of employees of this Board as to the tax treatment of the Z merger. Since the facts in this matter fail to show a detrimental reliance by the taxpayer on such statements, there can be no estoppel.